

**KENTUCKY PERSONNEL BOARD
MINUTES OF JUNE 19, 2015**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on June 19, 2015, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Amanda Cloyd, Member
William "Bill" Sheckles, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Swearing in of newly elected Board members

The first order of business was to swear in the newest Board Member, Mr. William Sheckles, and reappointed Board Member, David Hutcheson. General Counsel Boyce A. Crocker administered the oath of office. Mr. Sheckles replaces Mr. Blevins, whose term ends January 1, 2016. Mr. Hutcheson's term expires on January 1, 2019.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MAY 15, 2015**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Judge Chandler moved to approve the minutes, as submitted. Mr. Hutcheson seconded and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that the fiscal year ends this month and the Board has enough funds left over to hear cases.

Mr. Sipek stated that he and Mr. Crocker attended the Attorney General's 13B hearing officers training. Supreme Court Justice Michelle Keller (a former Board member) was one of the speakers.

Mr. Sipek advised that he and Mr. Crocker did a presentation for the State Government Bar Association about recent Personnel Board cases.

Mr. Sipek welcomed the newest Board member, Mr. Bill Sheckles. He also thanked Mr. Hutcheson for continuing to attend meetings until his reappointment.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, Executive Director, came forward to present the Personnel Cabinet's report.

Ms. Bevington advised that Governor Beshear issued an executive order raising the hourly wage for state employees to \$10.10 an hour and \$4.90 for tip workers. This salary adjustment will go into effect July 1, 2015, and will affect about 800 employees.

Ms. Bevington stated that Governor Beshear also approved a salary increase for Department of Corrections' security staff (i.e., Correctional Officers, Sergeants and Lieutenants). For non-security staff, the workweek changed from 37.5 hours to 40 hours, which will increase their pay. These changes were made to decrease employee turnover.

Ms. Bevington stated that the amended regulations, which were approved by the Board last month, should go in effect on July 1, 2015.

5. ORAL ARGUMENTS

A. David Bauman v. Transportation Cabinet (2014-312)

Present for oral arguments were Appellant, David Bauman, and counsel for Appellee, the Hon. Will Fogle. After presenting oral arguments, the parties answered questions from the Board.

B. Megan Maynard v. Finance and Administration Cabinet (2014-240)

Present for oral arguments were Appellant, Megan Maynard, and counsel for Appellee, the Hon. Katherine Fitzpatrick. After presenting oral arguments, the parties answered questions from the Board.

6. **MOTIONS**

**Thomas A. Smith v. Cabinet for Health and Family Services and
Tanya Dickinson (2014-242)**

--Appellant's Motion to File Late Exceptions

--Appellee's Response to Motion

Mr. Gillis moved to deny Appellant's motion to file late exceptions. Ms. Cloyd seconded and the motion carried 7-0.

7. **CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Sheckles seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (10:40 a.m.)

Dr. Stevens moved to return to open session. Mr. Sheckles seconded and the motion carried 7-0. (11:40 a.m.)

8. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. **David Bauman v. Transportation Cabinet (2014-312)**

Judge Chandler, having noted Appellant's exceptions, Appellee's response and oral arguments, moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

B. **Megan Maynard v. Finance and Administration Cabinet (2014-240)**

Mr. Hutcheson, having noted Appellee's exceptions, Appellant's exceptions (returned as untimely), Appellant's response and oral arguments, moved to accept the recommended order sustaining the appeal to the extent therein. Judge Chandler seconded and the motion carried 7-0.

C. Kim Sutherland v. Transportation Cabinet (2014-187)
(Deferred from May meeting)

Mr. Gillis, having noted oral arguments, moved to accept the Final Order sustaining the appeal to the extent that the five-day suspension was reduced to a three-day suspension, as attached to the minutes. Dr. Stevens seconded and the motion carried 7-0.

D. Ronald Voils v. Public Protection Cabinet (2014-032)

Ms. Cloyd, having noted Appellant's exceptions and Appellee's response, moved to accept the Final Order (incorporating the interim order dated July 24, 2014) dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0, with Mr. Gillis recusing.

E. Ricardo Aranda v. Justice and Public Safety Cabinet (Corrections)
(2014-171)

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Mr. Sheckles seconded and the motion carried 7-0.

F. Kimberly Coomes v. Justice and Public Safety Cabinet (Corrections)
(2014-198)

Mr. Hutcheson moved to accept the Final Order dismissing the appeal as moot, as attached to the minutes. Dr. Stevens seconded and the motion carried 7-0.

G. Robert Edwards v. Labor Cabinet (2014-053 and 2014-277)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0, with Mr. Gillis recusing.

H. Steve W. Kepley v. Cabinet for Health and Family Services (2015-010 and 2015-032)

Judge Chandler moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 7-0.

I. Jeremy Lucas v. Justice and Public Safety Cabinet (Corrections) (2014-329)

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

J. Kenny Mitchell v. Energy and Environment Cabinet (2014-334)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Ms. Cloyd seconded and the motion carried 6-0, with Mr. Gillis recusing.

K. Maureen Morrison v. Cabinet for Health and Family Services (2013-110)

Judge Chandler moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 7-0.

L. Daniel M. Phillips v. Transportation Cabinet (2015-017)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

**M. Thomas A. Smith v. Cabinet for Health and Family Services and
Tanya Dickinson (2014-242)**

Judge Chandler moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

**N. Jason Sutherland v. Justice and Public Safety Cabinet (Corrections) and
Personnel Cabinet (2014-335)**

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Mr. Sheckles seconded and the motion carried 7-0.

Show Cause Order – No Response Filed – Appeal Dismissed

Dr. Stevens moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Cloyd seconded and the motion carried 7-0.

O. Stephanie Beale v. Justice and Public Safety Cabinet (Juvenile Justice)

9. WITHDRAWALS

Dr. Stevens moved to accept the following withdrawal of appeals *en bloc* and dismiss the appeals. Mr. Gillis seconded and the motion carried 7-0.

- A. Clyde Adams v. Tourism, Arts and Heritage Cabinet (Parks)
- B. William Baldwin v. Personnel Cabinet
- C. Carolyn Crisp v. Justice and Public Safety Cabinet (Corrections)
- D. William King, Jr. v. Education and Workforce Development Cabinet
- E. Kerry Lauth v. Justice and Public Safety Cabinet (Corrections)
- F. Tina Lusk v. Tourism, Arts and Heritage Cabinet (Parks)
- G. Joseph Swanner v. Justice and Public Safety Cabinet (Corrections) and Personnel Cabinet

10. **SETTLEMENTS**

Judge Chandler moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Dr. Stevens seconded and the motion carried 7-0, with Ms. Cloyd recusing from settlement "B."

- A. Pamela Gibson v. Tourism, Arts and Heritage Cabinet (Parks) (mediated)
- B. Wade Hester v. Finance and Administration Cabinet
- C. Rebecca Elaine Kreutzer v. Department of Education
- D. Covan "Jill" Butler v. Cabinet for Health and Family Services
- E. Leigh Cross v. Justice and Public Safety Cabinet (Corrections)
- F. Mark T. Smith v. Energy and Environment Cabinet

11. **OTHER**

Annual Increments for Executive Director and General Counsel

Dr. Stevens moved to give both the Executive Director and the General Counsel a one percent (1%) increment beginning July 1, 2015, which is identical to the raise for state employees in their salary bracket approved in the 2014-2016 Biennial Budget. Mr. Gillis seconded and the motion carried 7-0.

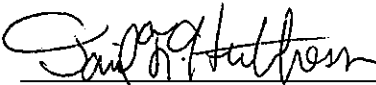
Mr. Crocker advised that he would be unable to attend either the October 9 or November 13, 2015 Board meeting and requested the dates be changed. The Board members agreed to change the October 9 meeting to Monday, October 12, and the November 13 meeting to Friday, November 20.


There being no further business, Dr. Stevens moved to adjourn. Mr. Gillis seconded and the motion carried 7-0. (11:55 a.m.)

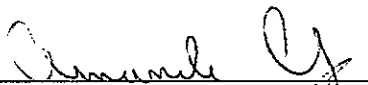

Wayne D. Sapp, Chairman



Larry Gillis, Vice Chairman


David B. Stevens, Member


David F. Hutcheson, Member


Tommy W. Chandler, Member


Amanda Cloyd, Member


William S. Sheckles, Member

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-198**

KIMBERLY COOMES

APPELLANT

**FINAL ORDER
REJECTING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS,
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

** ** *

The Board at its regular June 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 14, 2015, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are rejected and the Board issues its own Findings of Fact, Conclusions of Law and Recommended Order as follows:

BACKGROUND

This matter came on for an evidentiary hearing on January 7, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

Appellant, Kimberly Coomes, was present and not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous. Also present as Agency representative was Aaron Smith, Warden of the Kentucky State Reformatory.

There are two issues in this appeal. The first is whether the five-day suspension of the Appellant, from duty and pay, from her position as a Social Service Clinician I with the Department of Corrections, was taken with just cause and was neither excessive nor erroneous. The burden of proof is on the Appellee to prove its case by a preponderance of the evidence. The second issue is the Appellant's claim that she failed to receive proper notice of this suspension, in violation of KRS 18A.095(8). The burden of proof on this issue was on the Appellant to prove her claim by a preponderance of the evidence.

Opening statements were waived by both parties. Prior to having gone on the record the Hearing Officer noted the recent submission by the Appellant of a proposed exhibit. The parties had engaged in discussions of possible partial settlement of this case. The proceedings went off the record and the Hearing Officer left the hearing room to allow the parties privacy to conclude their settlement discussions.

The parties advised the Hearing Officer they had agreed to a partial settlement of the case. Mr. Baylous stated that Ms. Coomes had proposed to introduce a document that appeared to be an arrest record for Michael Schiesser, the officer involved in the incident. Mr. Baylous stated that document had not been timely disclosed to the Cabinet as part of Appellant's witness and exhibit list.

Mr. Baylous further stated that the Cabinet would waive objection to the late submission of that document and stipulate it may be admitted into evidence. In exchange, the Cabinet has "stipulated that she did not, in fact, receive a copy of the final suspension letter prior to the commencement of her suspension. In order to cure that defect, we have offered to essentially change the leave from an unpaid suspension to an administrative leave with pay and reimburse her for the pay that she had lost as a result of this suspension."

Mr. Baylous continued, "Should we prevail in this appeal, after the decision becomes final, at that time we would impose the five-day suspension without pay, but only after finality of the case and we have prevailed on the merits of the case. And she has agreed, in exchange for my stipulation to the admissibility of the document and waiving of late notice. She will accept that resolution to cure the defect on the timing of the suspension letter." Ms. Coomes confirmed that this was her understanding.

Pursuant to questions from the Hearing Officer, the Cabinet affirmed that by stipulating it had not provided Appellant proper notice of her suspension, Appellant therefore met her burden of proof in her claim that she failed to receive proper notice of the suspension, in violation of KRS 18A.095(8).

The Hearing Officer next asked why he should not then summarily rule in Appellant's favor if the suspension is void for failure to abide by the notice requirements in KRS Chapter 18A. Mr. Baylous responded, "Because we don't believe that the technical failure operated as a bar for us issuing discipline, and we also believe there is an issue of waiver, by leaving the facility, she prevented us from handing it to her prior to the suspension, or delivering it to her, prior to the suspension beginning. So I think there was an issue of a potential waiver."

The Hearing Officer inquired, if the matter were now changed to administrative leave, whether he and the Personnel Board had jurisdiction to hear anything, as administrative leave is not an appealable disciplinary action. Mr. Baylous responded, "Well, I think the fact that it's part of the settlement doesn't change the jurisdiction. It's an agreement that we have reached."

The Hearing Officer posited the question that if he accepted the settlement, that is, placing Ms. Coomes on administrative leave, is that not the starting point for this hearing? He inquired how it is that he could reinstate a suspension.

The Hearing Officer asked Ms. Coomes whether she was agreeable to the settlement as proposed. She affirmed that she was. The Hearing Officer indicated he accepted the settlement with the caveat that he would revisit and look at the status of Appellant's original suspension in view of the two stipulations made by the Cabinet.

The Hearing Officer took evidence from the parties, hearing from witnesses Kimberly Coomes and Aaron Smith. Testimony offered at the hearing is not relevant to the outcome of this appeal, and will not be recited in this Final Order.

FINDINGS OF FACT

1. The parties stipulated that the Appellant did not receive a copy of the final suspension letter prior to commencement of her suspension; that the Cabinet will change the unpaid suspension to administrative leave with pay and reimburse Appellant for the pay she lost during the suspension; that Appellant has met her burden of proof on her claim that she failed to receive proper notice of the suspension, in violation of KRS 18A.095(8). The Cabinet stipulated to the admission of Appellant's Exhibit 1, a document purporting to be the arrest record of Michael A. Schiesser. The parties further agreed that in the event the Cabinet prevails in this appeal, after the decision becomes final, then at that time the Cabinet would re-impose the five-day suspension against the Appellant without pay.

2. The Appellee, having withdrawn the suspension of the Appellant, the Appellant is no longer facing a penalization as the term is defined at KRS 18A.005(24).

3. The Appellant was not issued an Intent to Dismiss letter and is not eligible to be placed on Administrative Leave, pursuant to KRS 18A.095(2)(c).

CONCLUSIONS OF LAW

1. The Appellee, having admitted that it failed to properly give the Appellant advance notice of her suspension in violation of KRS 18A.095(8), the Appellee has now withdrawn its suspension of the Appellant.

2. The Appellant is no longer facing a penalization as the term is defined at KRS 18A.005(24), and the Board does not have jurisdiction over this matter, as this appeal is now moot.

3. The appeal is moot because the Appellant is no longer facing any type of appealable penalization, and the Appellant has been granted the relief she was seeking in this matter.

4. The Board does not have jurisdiction to hear an appeal regarding a potential suspension that the Appointing Authority may impose upon the Appellant depending upon a ruling by the Personnel Board.

5. As a result, the Board cannot approve the proposed agreement by the parties.

6. In addition, the Personnel Board cannot sanction the use of Administrative Leave when an employee has not been issued an Intent to Dismiss letter. See KRS 18A.095(2)(c).

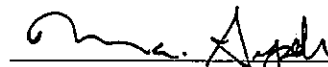
ORDER

IT IS HEREBY ORDERED that the appeal of **KIMBERLY COOMES VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-198)** is **DISMISSED AS MOOT**. The Appellee shall also reimburse the Appellant for any leave time she used attending the hearing and any pre-hearing conferences. [KRS 18A.095(25).] The Appellee shall reimburse the Appellant for the five-day suspension already served.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 24th day of June, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous
Kimberly Coomes
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-187**

KIM SUTHERLAND

APPELLANT

**FINAL ORDER
REJECTING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**TRANSPORTATION CABINET
MIKE HANCOCK, APPOINTING AUTHORITY**

APPELLEE

** ** ** **

The Board at its regular June 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 16, 2015, having noted oral arguments of the parties and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are rejected and the Board issues its own Findings of Fact, Conclusions of Law and Recommended Order as follows:

INTRODUCTION

This matter came on for an evidentiary hearing on January 15, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Kim Sutherland, was present and not represented by legal counsel. Appellee, Transportation Cabinet, was present and represented by the Hon. William Fogle. Also present as Agency representative was the Hon. J.R. Dobner.

BACKGROUND

1. Appellant, Kim Sutherland, is a classified employee with status who is employed as an Administrative Specialist III with the Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing, Driver Education Support Section.

2. Appellant was notified that she was being suspended for five days due to misconduct by means of a letter dated August 19, 2014. A copy of that letter is attached and incorporated herein as **Final Order Attachment A**.

3. Appellant timely filed Appeal No. 2014-187 on August 27, 2014, appealing her five-day suspension.

4. It was established by Interim Order, dated October 8, 2014, that the Appellee, Transportation Cabinet, shall bear the burden of proof to demonstrate that the disciplinary action was neither excessive nor erroneous and was taken with just cause.

5. Appellee called its first witness. **J.R. Dobner** is the Policy Advisor for the Cabinet's Office of Human Resource Management, a position he has held for the past two years. Dobner's duties include oversight of drafting disciplinary letters before they are forwarded to Carol Beth Martin, Executive Director of the Office of Human Resource Management.

6. Dobner testified that he is familiar with Appellant because he drafted her December 11, 2013 written reprimand, and received the request for disciplinary action for the suspension that is the subject of this appeal.

7. Dobner stated that Appellant is an Administrative Specialist III in the Department of Vehicle Regulation, Division of Driver Licensing, Driver Education Support Section. The three areas in which Appellant works are the Alcohol Treatment Program, State Traffic Schools, and the Graduated License Program. In her capacity as an Administrative Specialist III, she answers the phone and answers questions individuals have about their driver's licenses. Her job also includes the documentation of these phone calls in the "resolution field section" of the Information Technology Service Management System (ITSM).

8. Dobner explained the circumstances that led to Appellant's five-day suspension: The Division of Driver Licensing has a general call center that deals with "garden variety" questions. If more expertise is needed, the call is forwarded to a staff member with more specialized knowledge. On July 31, 2014, a call from a private individual, E.H., was forwarded to Appellant.

9. E.H. first spoke to an employee in the call center ("CSP") inquiring into the status of his driver's license. E.H. had gone through the criminal process for a DUI, and also had to reschedule a missed State Traffic School appointment. The call center employee told E.H. that his license was still active. For some reason (Dobner did not know why), E.H.'s call was forwarded to Appellant. Appellant informed E.H. that his license was not active, and then wrote in her documentation of the call: "I fibbed and told him DUI was on the record, although CSP had admitted that it wasn't."

10. Dobner testified that Appellant had been disciplined with a written reprimand on December 11, 2013, for inappropriate emails and nine instances of "inappropriate comments regarding the customers you assisted in the resolution field section of the ITSM." (Written reprimand, Appellee's Exhibit 2.) Dobner added that records from the ITSM database are subject to Open Records Request.

11. Dobner stated that Appellant's behavior regarding E.H. was a violation of General Administration and Personnel Policy 801, specifically, Appellant failed to:

- "Carry out assignments as directed by their supervisors or requesting meetings with their supervisors to seek further direction or discuss problems with the assignments" and
- "Showing courtesy, respect, and promptness in relating to fellow employees and members of the public."

(GAPS 801, Appellee's Exhibit 4.)

12. Dobner was asked why Appellant was given a five-day suspension. Dobner answered that the Division of Driver Licensing was making a concentrated effort to increase its employees' level of accuracy, quality of work, and professionalism. In addition, Appellant had a previous corrective action, but her inappropriate behavior continued. Dobner stated: "We need to give her a road map of what could happen if this behavior continues. A one-day suspension would not prepare her for the consequence if this happens again. Her professionalism is lacking."

13. **Kenneth Pruitt** is an Administrative Section Supervisor in the Department of Vehicle Regulation, Division of Driver Licensing. His job duties include the management of State Traffic School, the Graduated License Program, and the DUI/Alcohol Treatment Program. He supervises seven employees, one of whom is the Appellant.

14. Pruitt was asked to describe Appellant's job duties. He stated that she is primarily responsible for ensuring the accuracy of data regarding citizens who have been involved with DUIs. She also assists, as needed, with phone calls regarding State Traffic School and the Graduated License Program.

15. Part of Appellant's job is to document the results of every phone inquiry she handles. This documentation is put into a computer system which logs the details of every call.

16. Pruitt testified that on July 31, 2014, an incident occurred regarding Appellant's handling of a phone call that led to his requesting that a disciplinary action be taken.

17. That day an individual named E.H. phoned the call center asking about the status of his license. The call center employee told E.H. his license was "in force," which was true according to the information contained in the Driver History Evaluation Report (Appellee's Exhibit 6). E.H. was transferred to Appellant who told E.H. that his license was suspended. Then Appellant wrote on the computer log:

I fibbed & told him DUI was on the record, although CSP had admitted that it wasn't. he said he has 3 more weeks to finish program. took record down to Jenny to get DUI added. (sic)

(Appellee's Exhibit 7.)

18. Pruitt stated that after Appellant "lied to the individual, she went down to the Court Records Department to get his license officially suspended." The proper protocol would have been for Appellant to tell E.H. the truth - - that his license was actually "in force." She should have said to him: "As of right now, you are not suspended, but your suspension could post at any time."

19. At the end of Pruitt's testimony, the Appellee rested its case.

20. Appellant called her first witness. **Michael Neal** is an Administrative Branch Manager for the Driving History Record and Education Branch, Department of Vehicle Regulation. Appellant has worked in this branch for the past eight years.

21. Neal was asked to review Appellee's Exhibit 6, a "Driver History Evaluation Report" for E.H. Neal stated that according to the report, Appellant's license was not suspended until the day he phoned the Call Center, July 31, 2014.

22. On cross-examination, Neal was asked to explain the consequence a driver faces for failure to attend State Traffic School. Neal answered that once a driver has been scheduled to attend a class, and he fails to do so, his license is suspended until he pays a \$40 fee and reschedules to attend another class.

23. Neal was asked if it is the responsibility of a Division of Driver Licensing employee to correct a driver's records when that employee finds out a DUI has not been properly reported and entered into the Drivers Licensing database. Neal answered in the affirmative and agreed that it was part of Appellant's job. Neal explained that when a DUI is reported to the Transportation Cabinet by the state court handling the offense, if the information is not properly submitted, the Transportation Cabinet rejects the report until the right information is supplied, which is apparently what happened in E.H.'s case.

24. Through Neal's testimony Appellant's evaluation for 2012 and 2013, and her evaluations of the first two interim periods of 2014 (January 1 through August 31, 2014) were submitted. Appellant's score for 2013 was "413," which put her in the "Highly Effective" category. Neal concluded: Appellant "has good work performance, that is not in question." (Appellant's Exhibit 5.)

25. The Appellant, **Kim Sutherland**, testified on her own behalf. She is an Administrative Specialist III for the Department of Vehicle Regulation, Division of Driver Licensing, Driver Education Support Section. Appellant testified that she spoke to E.H. on the phone on July 31, 2014, after an employee at the Call Center had transferred the call to her. E.H. told her that he had missed his scheduled State Traffic School class because of a DUI he had received. E.H. stated that he was about to finish his Alcohol Treatment classes and only had three more to go.

26. Appellant looked at E.H.'s Driver History Evaluation Report, an on-line database. She noticed that his DUI was not on the record. While she was speaking to him on the phone, she pulled up the court record of his "Operating a motor vehicle under the influence of alcohol" charge, which was resolved on April 25, 2014, with a "guilty" plea in Harlan District Court. (Appellant's Exhibit 3.)

27. Appellant told E.H. she would reschedule his missed traffic school class. She also told him his license was suspended because in her "determination" it was. It should have been suspended for his failure to complete a scheduled State Traffic School class, as well as for his DUI conviction on April 25, 2014. According to Appellant, E.H. faced two reinstatement fees of \$40 each if his license was suspended twice.

28. Appellant stated that while E.H.'s driver's license record technically stated that it was "active," that notation was incorrect. She testified that she told E.H. his DUI was on record when in actuality it was not. She added: "It was my determination that it was not in his best interest for me to tell him his DUI wasn't there. It would have caused him to pay an extra \$40 for a reinstatement fee."

29. As soon as Appellant ended the call with E.H., she went directly to the Court Records Section of her division and advised them E.H.'s April 25, 2014 DUI needed to be added to his Driver History Evaluation Report, which they did.

30. KRS 18A.095(1) reads:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

31. 101 KAR 1:345, Sections 1 and 4, read as follows:

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

...

Section 4. Suspension.

(1) A suspension shall not exceed thirty (30) working days.

(2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

32. General Administration and Personnel (GAP) Policy 801 reads in relevant part:

The Cabinet's expectations for generally acceptable conduct of its workforce include but are not limited to:

- Carrying out assignments as directed by their supervisors or requesting meetings with their supervisors to seek further direction or discuss problems with the assignments.
- Showing courtesy, respect, and promptness in relating to fellow employees and members of the public.

FINDINGS OF FACT

1. Appellant, Kim Sutherland, is employed as an Administrative Specialist III with the Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing, Driver Education Support Section.

2. Appellant was suspended for five days effective August 20, 2014, for poor work performance. Appellant filed a timely appeal from her suspension on August 27, 2014.

3. Appellant's job duties included answering calls from drivers licensed in Kentucky who have questions about state driving programs or the status of their license.

4. On July 31, 2014, Appellant received a call from E.H. who called to check the status of his driver's license. According to the Driver History Evaluation Report (Appellee's Exhibit 6), E.H.'s license was still active in the system.

5. Appellant testified that she looked at E.H.'s Driver History Evaluation Report and noticed that his DUI had not been posted on the report. While she was speaking to him she verified on a separate database that E.H. had pled guilty to "Operating a motor vehicle under the influence of alcohol" charge on April 25, 2014.

6. By Appellant's own admission, she gave E.H. false information. She told him his license had been suspended, when, in fact, it was still active in the system. Kenneth Pruitt, Appellant's supervisor, testified that the proper protocol would be to tell E.H. the truth that his license was active, but to clarify with him that the license suspension could post at any time.

7. Appellant wrote in the "resolution field" of the office database which serves as documentation of these calls:

told him that I would reschedule his STS (State Traffic School) & be expecting a letter in 2-4 wks. verified pob. I fibbed & told him DUI was on the record, although CSP had admitted that it wasn't. he said he has 3 more weeks to finish program. Took record down to Jenny to get DUI added. (sic) (emphasis added).

(Appellee's Exhibit 7.)

8. When Appellant got off the phone with Appellant, she advised the Court Records Section of her division that E.H.'s April 25, 2014 DUI needed to be added to his Driver History Evaluation Report.

9. Michael Neal, Administrative Branch Manager for the Driver History Record and Education Branch, testified that E.H.'s DUI may have failed to post onto his Driver History Evaluation Report initially because the state court handling the offense may not have properly submitted the information regarding the offense, which may have caused the Transportation Cabinet to reject the report until the proper information was supplied. Appellant properly submitted the information regarding E.H.'s DUI to the Court Records Section, and his license was suspended on July 31, 2014. (Appellee's Exhibit 6.)

10. Appellant received a written reprimand on December 11, 2013, for forwarding an inappropriate e-mail to five coworkers, and for nine instances of inputting inappropriate comments on the "resolution field" section of the Information Technology Service Management System.

11. J.R. Dobner, Policy Advisor for the Cabinet's Office of Human Resource Management, testified that a five-day suspension was chosen as the appropriate level of discipline in Appellant's case because despite the previous corrective action, her behavior of writing inappropriate comments continued. Dobner added: "We need to give her a road map of what could happen if the behavior continues. A one-day suspension would not prepare her for the consequence if this happens again. Her professionalism is lacking."

12. While the Board is mindful that it is Appellant's position that she told E.H. that his license was suspended in order to save him an additional \$40 for a second license reinstatement fee, the words she wrote in the ITMS resolution field, are particularly egregious in light of the written reprimand she received in December, 2013:

I fibbed and told him his DUI was on the record. Although CSP admitted that it wasn't. (sic)

That reprimand put Appellant on notice that her comments on the ITMS "should remain professional," and that further incidences of this kind of behavior would result in disciplinary action. Admitting that she told E.H. incorrect information and then documenting that falsehood on an official document is unprofessional and a violation of GAP-801.

13. The Board finds, however, that the five-day suspension Appellant received for poor work performance to be excessive under the circumstances. The Board concurs with the Hearing Officer that Appellant's statements on the ITMS were unprofessional and would justify disciplinary action. The Board disagrees that a five-day suspension is necessary to impart that message, noting Appellant's ultimate goal was to notify the customer as to what would happen very shortly regarding the DUI and ensure that the action was properly recorded by the Transportation Cabinet.

CONCLUSIONS OF LAW

1. Appellant's unprofessionalism handling the phone call from E.H. on July 31, 2014, satisfied the elements of poor work performance pursuant to 101 KAR 1:345.
2. Appellant's poor work performance meets the for cause requirements of KRS 18A.
3. The Board concludes that the five-day suspension was excessive for the reasons stated in Findings of Fact paragraph 13 above.

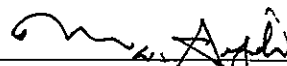
ORDER

The Board orders that the appeal of **KIM SUTHERLAND VS. TRANSPORTATION CABINET (APPEAL NO. 2014-187)** be **SUSTAINED** to the extent that the five-day suspension without pay is reduced to a three-day suspension without pay. The Board further **ORDERS**, Appellant shall be restored all pay, benefits and made whole with respect to the restoration of the two working days. Appellee shall also reimburse Appellant for any leave time she used attending the hearing, any pre-hearing conferences, and oral argument at the Board. [KRS 18A.105, 18A.095(25), and 200 KAR 12:030.]

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 24th day of June, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof mailed this date to:

Hon. William Fogle
Kim Sutherland
Kathy Marshall



Steven L. Beshear
Governor

TRANSPORTATION CABINET
Frankfort, Kentucky 40622
www.transportation.ky.gov/

Michael W. Hancock, P.E.
Secretary

August 19, 2014

Kim Sutherland

Personnel Number: 172443

Re: Five (5) Day Suspension

Dear Ms. Sutherland:

Based on the authority of KRS 18A.095 and 101 KAR 1:345, Section 4, you are hereby notified that you are officially suspended from duty and pay for five (5) working days, effective the beginning of business August 20, 2014 and ending the close of business August 26, 2014. In accordance with 101 KAR 1:345, Section 1, you are being suspended from your position as an Administrative Specialist III with the Kentucky Transportation Cabinet (KYTC), Department of Vehicle Regulation, Division of Driver Licensing, Driver Education Support Section, for the following specific reason:

Poor Work Performance. On July 31, 2014, you received a call from Edward Hensley. Hensley called to check the status of his class D license. You informed Hensley that you would reschedule his State Traffic School (STS) and that his license was suspended due to a recent DUI. However, his license was still in active status in the system. You falsely informed Hensley that his license was suspended. In the comments section of Hensley's call record you wrote, "I fibbed & told him DUI was on the record. Although CSP (customer service person) had admitted that it wasn't".

You have been counseled by management that information that is given to drivers and/or entered in a record needs to be accurate. Your actions are in violation of 101 KAR 1:345, Section 1, and the General Administration and Personnel Policy (GAP 801) by not carrying out assignments as directed by your supervisor and giving false information to a driver and then documenting that you had done so in the driving record.

You received a written reprimand on December 11, 2013 for lack of good behavior.

Any further incidents of poor work performance may result in disciplinary action, up to and including dismissal.

Kentucky

Final Order Attachment A

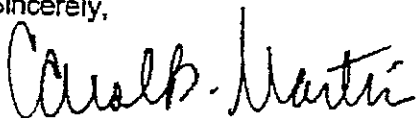
APPELLEE'S
EXHIBIT

Kim Sutherland
August 18, 2014
Page Two

For your information, the Kentucky Employee Assistance Program (KEAP) is an assessment and referral service for state employees. KEAP can help you with any personal problems that may be affecting your job performance. Participation is voluntary and confidential. You can reach KEAP at 1-800-445-5327 or 502-564-5788.

As you are an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of the receipt. To appeal, you must complete the attached form and direct it to the address indicated on the form. Copies of KRS 18A.095 and 101 KAR 1:365 concerning appeal and hearing procedures are enclosed.

Sincerely,



Carol Beth Martin
Appointing Authority

CBM:acr

Attachments

cc: Personnel Cabinet
Personnel Board
Rodney Kuhl, Commissioner
Carolyn Brown, Division Director
Michael Neal, Administrative Branch Manager
Cabinet Employee File